IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 19451 of 1999

Between:

R. Muthvali s/o. Ramaiah Devar
Bhanur Unit,r/o. Bhanur, Medak District.

..... PETITIONER

AND

1 Bharath Dynamics Ltd., Kanchanbagh, rep. by its Chairman & Managing Director, Hyderabad.
2 General Manager, (P&A), Bharath Dynamics Ltd., Kanchanbagh, Hyderabad.
3 General Manager, Bharath Dynamics Ltd., Bhanur Unit, Bhanur, Medak District.
4 Deputy General Manager (P&A), Bharath Dynamics Ltd., Bhanur, Medak Dist.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order of direction more particularly a Writ in the nature of Mandamus, declaring the action of the respondents in regularising the services of the petitioner in the category of Helper even-though he was appointed and discharged his duties as a Lineman as being illegal, arbitrary and consequently direct the respondents to regularise the services of the petitioner in the category of Lineman from the date of his initial appointment with monetary benefits, etc.,

Counsel for the Petitioner: MR.S.SHARAT KUMAR

Counsel for the Respondents.: MR.K.SRINIVASAMURTHY, Standing Counsel.

The Court made the following :

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

WRIT PETITION NO. 19451 OF 1999

ORDER:

Heard Sri S.Sharath Kumar, the learned counsel appearing on behalf of the petitioner and Sri K.Srinivasa Murthy, the learned Standing Counsel appearing on behalf of the respondents 1 to 4.

The petitioner, who is working as a lineman with the respondents, files this writ petition, *inter alia*, seeking for a writ of Mandamus to declare the action of the respondents herein in regularizing his services in the category of Helper as per the impugned proceedings Reference No.BDL/6073/R-10/98, Personal Department, dated 13.08.1998 in spite of the fact that he was appointed all along as a Lineman.

The case of the petitioner, in brief, is that he has been appointed as a Lineman and working as such from 01.09.1989 in Civil Engineering Department. Initially, he was appointed in the said post as a casual employee and was paid wages at Rs.22/- per day and later on with effect from 01.03.1992 to 31.03.1997 he was paid the wages at Rs.56/- per day which is applicable to the post of Lineman. At the relevant point of time, the wages for the post of Helper was Rs.50/- per day. Further, it is pointed out that everywhere the petitioner is described as a Lineman only and not as a Helper. However, under the impugned proceedings, the respondents without any proper notice or opportunity muchless any enquiry, have regularized his services as a Helper with effect from 01.04.1997 which is wholly baseless and unsustainable apart from arbitrariness and amounting to exploitation. It is further pointed out that

the basic pay for the post of Lineman is Rs.1965/- whereas that of Helper is Rs.1880/-. Since the petitioner was appointed after due regular selection and possesses the requisite qualification for the post of Lineman, there is no justification for treating him as a Helper. Hence, the writ petition.

In the counter affidavit filed on behalf of the respondents which is sworn to by its General Manager Sri R.Narasimha Reddy, it is stated that the petitioner was in fact appointed as a casual Helper and subsequently designated as a Lineman is erroneous as appropriate designations were not followed for casual appointments strictly as per the Recruitment and Promotion Rules of the Company as it was project stage. Therefore, the petitioner was casual labourer throughout and he has been continued as such in view of certain directions issued by this Court and also the Memorandum of Understanding entered with the Land Displaced Persons. Though the petitioner was not a Land Displaced Person, the he cannot make any claim. Since the petitioner is one among the persons who fall within the mischief under 12(3) of the Scheme, as approved by the Division Bench of this Court, he was being regularized in the post of Helper. Further, it is also contended that the petitioner does not possess the required qualification for the lowest technical post since he does not have ITI certification in the relevant discipline with National Apprenticeship Certificate and further he passed only VIII Class and therefore he cannot claim any right as such.

In the reply filed by the petitioner sworn to on 17.01.2005 apart from placing relevant documents, which have already been filed in support of the petition, it is stated that the petitioner had obtained certificate from Andhra Pradesh Electrical Licensing Board in the year 1992 itself and therefore, he holds the required qualification for being appointed as a Lineman.

Sri S.Sharath Kumar, the learned counsel appearing on behalf of the petitioner contended that every document in regard to his employment with the respondent-Corporation shows that the petitioner is only a Lineman in respect of which he also placed reliance on the identity card issued with S.No.H-047, dated 04.07.1995

which shows the designation as Lineman with Civil Engineering Department. The letter issued from Civil Engineering Division vide Ref.No.BDL/05/K/Misc./Elecl. dated 07.04.1993 also refers the petitioner as a Lineman and the proceedings of the same Engineering Division vide No.BDL/05/K/041, dated 16.02.1993 also refers to the petitioner as a casual Lineman. Further reliance was also placed in regard to the proceedings of the Civil Engineering Division vide Ref. No.BDL/05/041, dated 27.02.1992 and the natural of duties assigned to the petitioner vide proceedings dated 21.11.2002 by the Manager (PED) of the respondent which described the post of the petitioner as Lineman. The letter issued by the petitioner himself on 26.02.1992 described himself as a Lineman, which was remained un-rebutted. Similar letter dated 03.04.1992 from the petitioner to the Deputy Manager also reiterates as Lineman. It is also pointed out that the certificate issued by the A.P. Electrical Licensing Board with H.T.No.10107, dated 28.02.1992 shows that the petitioner has passed the prescribed examination for Wireman conducted by SBTE & T in August 1991 also supports the petitioner.

The learned Standing Counsel appearing on behalf of the respondents submits that the description as sought to be relied on by the petitioner as aforesaid is not only mistaken but also erroneous one and therefore it would not create any right in his favour and the petitioner's appointment itself is only that of an Helper.

Considering the submissions made and on perusal of the material, the question which falls for consideration is as to whether on the facts and circumstances of the case, whether the petitioner is entitled for regularization of his services in the post of Lineman or that of Helper.

There is no dispute to that fact that the petitioner is in service with the respondent with effect from 01.09.1989. There is also no denial in regard to the payment of wages made by the respondents at the rate, which is applicable to the Lineman and there is also no serious dispute in regard to the various documents relied on by the petitioner as stated above wherein every description is in favour of the petitioner showing him as a Lineman and not as a Helper. Except stating that the said description is erroneous one, there is no other material forthcoming on behalf of the respondents to show that the petitioner's appointment was only in the post of Helper

and he was treated as Helper and also paid the wages in such capacity. Thus, all the documents are in favour of the petitioner describing him as Lineman only. There is absolutely no explanation forthcoming on behalf of the respondents as to how the petitioner would consistently at different points of time is shown as Lineman. If really, his appointment was only that of a Helper under the impugned Proceedings, regularization of his services was done in the post of Helper. There is nothing on record to show that the petitioner was given any prior notice or opportunity before effecting such regularization in the said post of Helper. Necessarily it follows that there is a substantive variation in regard to the post, which claimed, by the petitioner and the same cannot be done without following the basic principles of natural justice. In fact, any such variation would affect the substantive rights of the petitioner and the same cannot be interdicted or varied without giving an opportunity, the impugned proceedings prima-facie being arbitrary, are liable to be set aside. This Court cannot go into all such questions and by taking into consideration of the aforesaid aspects, it is for the respondents to take an appropriate decision aptly on the material available after giving an opportunity;

The writ petition is, accordingly, allowed. The impugned proceedings are set aside. The respondents shall pass fresh orders after giving notice and opportunity to the petitioner and by taking into consideration of the relevant material as relied on by him, within four months from the date of receipt of a copy of this order. No costs.

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B. PRAKASH RAO, J

24th January, 2005.

Chvn.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Monday, the Twenty fourth day of January, Two thousand and five.

ASSISTANT REGISTRAR.

// TRUE COPY//

SECTION OFFICER.

To

1 The Chairman & Managing Director Bharath Dynamics Ltd., Kanchanbagh, Hyderabad.
2 The General Manager, (P&A), Bharath Dynamics Ltd., Kanchanbagh, Hyderabad.
3 General Manager, Bharath Dynamics Ltd., Bhanur Unit, Bhanur, Medak District.
4 Deputy General Manager (P&A), Bharath Dynamics Ltd., Bhanur, Medak Dist.

5 Two C.D. copies.